

Chapter 3

Incapacity Allowance and Loss of Earnings Allowance

3.1 The changes introduced in Schedule 3 are intended to rationalise the Temporary Incapacity (TI) Allowance and Loss of Earnings (LOE) Allowance. In effect the amendments will abolish the TI Allowance from 20 September 2011. This measure is designed to continue 'the government's commitment to streamlining and enhancing services and support to our veterans and members and their families'.¹

3.2 Currently, both allowances are paid under the VEA for a temporary inability to work due to a war or defence caused condition. They provide similar compensation, though 'the loss of earnings allowance provides compensation to a broader group but is restricted to veterans who experience an actual loss'.²

The temporary incapacity allowance

3.3 The TI Allowance is payable to an eligible veteran who has undergone hospital or other institutional treatment and has been off work for more than 28 days. The 28 days commences from the date of hospitalisation and may include post-discharge out-patient treatment or post-discharge medically recommended rest and recuperation.³

3.4 Under this provision, there is no requirement that income is actually lost, but the veteran must have been prevented from undertaking his or her usual remunerative work for the whole period.

3.5 Temporary incapacity allowance is paid at a rate that is the difference between disability pension already received and the special (totally and permanently incapacitated—T&PI) rate. Payment of loss of earnings allowance for this period will affect the amount of temporary incapacity allowance. If any lump sum permanent impairment compensation has been received under the *Safety, Rehabilitation and Compensation Act 1988* the payment of temporary incapacity allowance will be

1 The Hon Warren Snowdon, Minister for Veterans' Affairs, Minister for Defence Science and Personnel, Minister for Indigenous Health, *House of Representatives Hansard*, 20 June 2011, p. 6478.

2 Mrs Karen Andrews, *House of Representatives Hansard*, 16 June 2011, pp. 6352–6353.

3 DVA Factsheet, DP77, *Veterans' Entitlements Act 1986* (VEA), Temporary Incapacity Allowance
<http://factsheets.dva.gov.au/factsheets/documents/DP77%20Temporary%20Incapacity%20Allowance.htm> (accessed 29 July 2011)

reduced. This applies to lump sum compensation for any incapacity, irrespective of whether the incapacity is included in the assessment of the allowance.⁴

3.6 Payment of the allowance will also be affected by any entitlement to weekly incapacity payments under the *Military Rehabilitation and Compensation Act 2004*.

The loss of earnings allowance

3.7 Loss of earnings allowance compensates an eligible veteran for salary, wages or earnings lost due to absence from work for treatment of war or defence caused disabilities or to attend certain appointments. It may also compensate the veteran's authorised representative or attendant who accompanies the veteran at the time of receiving treatment or attending the appointments.⁵

3.8 Loss of earnings allowance can be paid where a veteran:

- receives treatment for a war or defence-caused disability (including waiting for the supply or repair of an artificial limb or other surgical aid);
- has used part or all of employer provided sick leave for a war or defence-caused disability, and now has no benefit to cover an absence for another illness;
- attends an appointment arranged by the department for the investigation of a claim for disability pension; or
- has an authorised attendant to provide assistance when obtaining treatment or another person acting on behalf of the veteran in relation to the veteran's claim for disability pension, who loses salary, wages or earnings.⁶

The above situations must result in a loss of earnings.⁷

3.9 The amount of loss of earnings allowance payable is: the difference between the special rate (T&PI) and the veteran's present disability pension, or the amount of

4 DVA Factsheet, DP77, *Veterans' Entitlements Act 1986* (VEA), Temporary Incapacity Allowance
<http://factsheets.dva.gov.au/factsheets/documents/DP77%20Temporary%20Incapacity%20Allowance.htm> (accessed 27 July 2011)

5 DVA Factsheet, DP75, *Veterans' Entitlements Act 1986* (VEA), Loss of Earnings Allowance,
<http://factsheets.dva.gov.au/factsheets/documents/DP75%20Loss%20of%20Earnings%20Allowance.htm> (accessed 27 July 2011)

6 DVA Factsheet, DP75, *Veterans' Entitlements Act 1986* (VEA), Loss of Earnings Allowance,
<http://factsheets.dva.gov.au/factsheets/documents/DP75%20Loss%20of%20Earnings%20Allowance.htm> (accessed 27 July 2011)

7 DVA Factsheet, DP75, *Veterans' Entitlements Act 1986* (VEA), Loss of Earnings Allowance,
<http://factsheets.dva.gov.au/factsheets/documents/DP75%20Loss%20of%20Earnings%20Allowance.htm> (accessed 27 July 2011)

salary, wages or earnings actually lost (including loadings or other allowances that would have been payable); whichever is the lesser amount.

3.10 Applications that result in the payment of loss of earnings allowance will be reduced if any lump sum permanent impairment compensation has been received under the *Safety, Rehabilitation and Compensation Act 1988*. The same rule applies to lump sum compensation for any incapacity, irrespective of whether the incapacity is included in the assessment of the allowance.

3.11 The maximum amount of compensation that an eligible veteran can receive under either one or both of these allowances is equivalent to the special rate (T&PI) of disability pension.

3.12 From 20 September 2011 eligible veterans will have access to the LOE Allowance only. Thus, payments of temporary incapacity allowance will cease from this date with future payments made through the LOE Allowance. According to the Minister:

This measure has no impact on a veteran's or member's existing disability pension payment. From 20 September 2011, all eligible veterans and members in this situation will be assessed consistently against the criteria for loss-of-earnings allowance.⁸

3.13 The change in arrangements will simplify the assessment of eligibility for payments and better target compensation expenditure. According to the government, this 'provides greater simplicity for clients in understanding their entitlements'.⁹ The department explained:

In order to receive the LOE Allowance, the veteran or member must have experienced some loss of earnings, which is not a requirement for TIA. Veterans or members who do not suffer a loss of earnings are not eligible to receive the loss of earnings allowance.¹⁰

3.14 Approximately 200 veterans or members received TI Allowance in the last 12 months. Those receiving TI Allowance that are not eligible for the LOE Allowance from 20 September 2011 will not receive any allowance as they have not suffered a loss of earnings during their temporary incapacity. Any veteran on TI Allowance at that time will need to apply for LOE allowance.

3.15 There are transitional provisions whereby veterans and members will be able to claim TI Allowance within 12 months of the commencement of the treatment, if the

8 The Hon Warren Snowdon, Minister for Veterans' Affairs, Minister for Defence Science and Personnel, Minister for Indigenous Health, *House of Representatives Hansard*, 20 June 2011, p. 6478.

9 Australian Government, *Budget Paper no. 2, Budget Measures 2010–11*, 'Part 2: Expense Measures, Veterans' Affairs', p. 330.

10 *Submission 2*, p. 7.

treatment period commenced prior to 20 September 2011. The department explained further that:

Transitional provisions will also mean that veterans and members may be eligible for TIA for any period of treatment that commences in the four weeks prior to 20 September 2011, where the treatment period would extend beyond four weeks, they would still receive TIA for the period up to and including 19 September 2011.¹¹

3.16 Although not opposed to 'this rationalisation, the opposition called on the government to ensure the changes are appropriately and effectively communicated to the veterans and ex-service community'.¹² More broadly, the committee considers the importance of keeping veterans informed about entitlements and changes to policy or procedures later in this report.

3.17 The bill 'will remove the current overlap in the allowances paid to veterans and members who are unable to work due to episodes of medical treatment and recuperation for war or defence caused injuries or diseases'.¹³

3.18 No concerns were raised about this measure during the committee's inquiry.

11 *Submission 2*, p. 8.

12 See Second reading speeches: Mrs Natasha Griggs, *House of Representatives Hansard*, 20 June 2011, p. 6469; and Mr Michael McCormack, *House of Representatives Hansard*, 20 June 2011, p. 6474.

13 The Hon Warren Snowdon, Minister for Veterans' Affairs, Minister for Defence Science and Personnel, Minister for Indigenous Health, *House of Representatives Hansard*, 20 June 2011, p. 6478.